



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 8004-99

2 February 2000

GYSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Gunnery Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 15 December 1999, a copy of which is attached. They also considered your rebuttal letter dated 10 January 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice. In this connection, the Board substantially concurred with the report of the PERB.

While late submission of the contested fitness report by your reviewing officer is not condoned, the Board did not find that this invalidated it. They were unable to find that you were denied a fair opportunity to rebut the report at issue. They likewise were unable to find either that the report criticized you for matters not your responsibility, or that you were not informed about deadlines and schedules for completing tasks. They found that your more favorable fitness reports for other periods did not invalidate the contested report, even if you are correct that your reviewing officer recommended you for promotion in his comments on the immediately following report (a copy of which you said you provided, but was not received).

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610

MMER/PERB

DEC 15 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
GUNNERY SERGEANT [REDACTED] USMC

Ref: (a) GySgt. [REDACTED] DD Form 149 of 29 Oct 99
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 December 1999 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 981001 to 990316 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is an unjust and inaccurate assessment of his performance during the stated period. To support his appeal, the petitioner furnishes his own detailed statement, copies of pertinent directives, and a copy of the challenged fitness report.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. In his statement appended to reference (a), the petitioner has done little more than reiterate his initial objections. The text of his rebuttal is replete with "finger pointing" and blame. One disturbing revelation is the petitioner's apparent perception that "the daily give and take of office activity does not equal formal counseling that a Reporting Senior can use to ensure his expectations of performance are fulfilled." The petitioner completely misses the point with this argument and mistakenly reasserts the same position in reference (a). Day-to-day interaction, guidance, and direction are all critical elements of the counseling process. As the Reviewing Officer so aptly stated in his adjudication: "The MRO has chosen not to consider the direction, advice, and admonishing of the RS as counseling."

b. As the Reviewing Officer, Lieutenant Colonel [REDACTED] provided an extremely thorough adjudication of both sides of the equation. In addition to addressing the individual tenets of

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the petitioner's rebuttal, he also provided a broader overview of the petitioner's performance based upon his own observations. The adjudication leaves no doubt as to the accuracy and fairness of the evaluation.

c. To justify the deletion or amendment of a fitness report, evidence of probable error or injustice should be produced. Such is simply not the situation in this case.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Gunnery Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps